

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of the Appeal of)	File No. SLD -
)	
the Decision of the)	
)	
Universal Service Administrator by)	
)	
)	
Glendale School District)	
)	CC Docket No. 02-6
)	CC Docket No. 96 - 45
)	CC Docket No. 97 - 21

MOTION TO SUPPLEMENT and AMEND APPEAL

March 30, 2011

Ms. Marlene H. Dortch
Secretary, Federal Communications Commission
445 12th Street, S.W., Washington, D.C. 20554

An appeal from a decision by the Administrator of the USAC, Schools and
Libraries Division was filed **April 3, 2010**

After a review of the "contract" that was provided by ALLtel to the E-rate
Applicant , Glendale, to execute it would appear that the bases of the
service is tariff and not contract as pointed out below. See also the
relevant portion of the so-called "contract." ATTACHED.

LAW AND ARGUMENT

The so-called "Contract" provides as follows, in relevant part:

GENERAL TERMS AND CONDITIONS FOR COMMUNICATION SERVICE
c. About Tariffs Your Service(s) Order and ALLTEL's¹ provision of Service(s) are subject to the provisions of any applicable local, state or federal tariffs.

Entire Agreement This Agreement, together with its applicable Service Order(s), price List any applicable tariff and these General Terms and Conditions constitutes the-entire agreement of the parties hereto, superseding any and all other agreements, written or oral, in respect of the subject matter hereof, except as explicitly referred to herein. In the event any of the Services(s) are subject to a tariff and the jurisdiction of a local, state or federal regulatory agency, the tariff shall be deemed to be part of this agreement and shall, to the extent allowed by law, control over the provisions of the agreement to the extent of any conflict between the tariff and the agreement.²

While, ostensibly, Alltel used a "contract", the plain language of the contract states that the "PRI" is subject to tariff pricing.

Tariffed services and month-to-month services do not require a signed contract. *FCC 10-175 (6TH Report and Order)*

See Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certifications Form (FCC Form 471) at 23, available at http://www.usac.org/_res/documents/sl/pdf/471i_fy05.pdf

A signed contract for all services you order on your Form 471 if required by state law **except:**

Tariffed services: Telecommunications services that you purchase at prices regulated by your state regulatory commission and/or the FCC, for which you do not have a signed, written contract. Page 19 FCC Form 471 Instructions – October 2010

¹ ALLTELL IS NOW WINDSTREAM

² <http://www.windstream.com/company/tariffs.html?st=PA>

Conclusion:

The Applicant is requesting that the FCC fund FRN 1929081.

Respectfully submitted,



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GENERAL TERMS AND CONDITIONS FOR COMMUNICATION SERVICES

"You," "your," and "Customer" mean the person, company, or business that subscribes to Communication Services. "We," "our," "us," and "ALLTEL" refer to ALLTEL Communications, Inc. and its subsidiaries and affiliates. "Communication Service(s)" or "Service(s)" refers to the communication services you have asked us to provide to you. "Service Order" means the form (whether paper or electronic) on which you apply Services and includes certain terms and conditions of the Services such as length of time you will subscribe to them, rate plans, access charges and the Equipment you have selected. "Equipment" means any communications equipment you purchase or lease from us.

Term

- a. **Fixed Term.** You agree to the Services for the length of time identified on the Service Order. The Services you receive after the end of the term will be provided on a month to month basis
- b. **Month-to-Month Term** If no length of time is identified on the Service Order, then the term is Month-to-Month.
- c. **About Tariffs** Your Service(s) Order and ALLTEL's provision of Service(s) are subject to the provisions of any applicable local, state or federal tariffs.

Termination by You

- a. **Fixed Term.** If you subscribe to a Service for a fixed term and you terminate the Service before the end of the term, or if you do not honor any advance notice of termination requirement, then you will be required to pay us an early cancellation fee as specified on your Service Order (Attachment "A"). In addition, you remain liable for payment of all outstanding charges for all Services you used and Equipment you purchased prior to termination.
- b. **Month-to-Month Term.** You may terminate a Service to which you subscribe on a month-to-month basis at any time by notifying us. You remain liable for payment of all outstanding charges for all Services you used and Equipment you purchased prior to termination.
- c. **Bundled Service.** If you receive special rates in return for subscribing to multiple Services ("bundling") and you subsequently unbundle, terminate, or disconnect any of these Services at any time, then we may adjust the rates for the remaining Service(s).
- d. **Change in Location** A change in your service address or the location to which any Service is provided to you may constitute your termination of that Service. Change in location *within an exchange* will result in applicable (re) installation charge.
Termination charges shall not apply if Services are upgraded to an equal or greater monthly amount than this Service(s) Order.

Termination by Us

We may interrupt or terminate a Service: (1) if you do not honor any provision of these General Terms and Conditions or of the applicable Service Order (including payment obligations), (2) if you use a Service in a manner that adversely affects Service to other customers or harasses our customers or employees or (3) if you or others use a Service to engage in fraud or unlawful conduct or are suspected of doing so. We may restore such interrupted or terminated Service, in our sole discretion, following correction of the violation and payment of any amounts due, including any restoration charge we assess for restoring your Service.

Charges for Services and Equipment

- a. **In General** You are responsible for paying all charges applicable to your account, including but not limited to: access, long distance, directory assistance, and the cost of Equipment. In addition, unless otherwise noted, you are responsible for paying taxes, surcharges, fees, and assessments imposed from time to time in connection with the Services and Equipment.
- b. **Rates** Tariffed rates are subject to change; however, Term-Percentage discounts (as noted) remain the same.

Limitation Liability We shall not be liable with respect to and loss, costs, damages, or related to, arising to, arising out of or with respect to use of the Services or Equipment in connection with 911 or E911 services or calling.

Entire Agreement This Agreement, together with its applicable Service Order(s), Price List, any applicable tariff, and these General Terms and Conditions constitutes is the entire agreement of the parties hereto, superseding any and all other agreements, written or oral, in respect of the subject matter hereof, except as explicitly referred to herein. In the event any of the Service(s) are subject to a tariff and the jurisdiction of a local, state or federal regulatory agency, the tariff shall be deemed to be part of this agreement and shall, to the extent allowed by law, control over the provisions of the agreement to the extent of any conflict between the tariff and the agreement.

SERVICE ORDER - ATTACHMENT A (continued)

Termination Liability (Per presiding Tariff)

Service(s)

- ☐ **DDS/DS1/DS3 (FEDERAL Interstate-interLATA Access) ie: Internet/ADSL Services**
When the minimum period (12 month) period is not fulfilled, The Termination Liability calculation is as follows:

$(\# \text{ of months in minimum period } \times \text{ current monthly rate}) - (\# \text{ months service was in place } \times (\text{current monthly rate } \times (1 - \text{discount percent})))$

When the minimum period (12 month) period is fulfilled, but The Service Discount Plan has not expired, The Termination Liability calculation is as follows:

$(\# \text{ of months in service was in place } \times \text{ current monthly rate } \times \text{ discount percent.})$

- ☐ **DDS/DS1/DS3 (STATE Intrastate-interLATA Access)**

When the minimum (12 months) period is not fulfilled, Discontinuance charges equal 100% of the undiscounted monthly rates

$(\# \text{ of months in minimum period } \times \text{ current monthly rate}) - (\# \text{ months service was in place } \times (\text{current monthly rate } \times (1 - \text{discount percent})))$

When the minimum period (12 month) period is fulfilled, but before the completion of the discount period, The Termination Liability calculation is as follows:

$(\# \text{ of months in service was in place } \times \text{ current monthly rate } \times \text{ discount percent.})$

- ☐ **DDS/DS1/DS3 (LOCAL PRIVATE LINE) ie: ALLTEL Facility Point to Point**

Customers requesting termination of service prior to expiration of the term agreement will remain liable for payment of a termination charge. The termination charge shall become due and payable in its entirety immediately upon any such termination and will be calculated as a percentage of the monthly term agreement charges for the remainder of the term.

Service discontinued in first through 11th month

$(40\% \times 12 \text{ month Term Agreement } \times [12 - \text{number of months in service}] + [12 \text{ month Term Agreement Rate} - \text{the subscribed rate}] \times \text{number of months in service}) = \text{TERMINATION CHARGE}$

Service discontinued in 12th through 60th month

$(\text{price} - \text{current Term Agreement price } \times \text{number months in service}) = \text{TERMINATION CHARGE}$

- ☒ **PRIMARY RATE ACCESS (PRI)**

Suspension of service is not allowed during the minimum charge period (12 months) without penalty. If the customer disconnects PRA prior to the service term agreement, the customer will pay a charge equal to the PRA monthly rate in affect on the date of the contract, multiplied by the remaining number of months on the term agreement for each PRA disconnected.

- ☐ **DIGITAL CHANNEL SERVICE (DCS)**

The minimum charge period for services under this tariff is one year.